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TO: Supervisor Don Knabe, Chair, Fourth District
Supervisor Gloria Molina, First District
Supervisor Mark Ridley-Thomas, Second District
Supervisor Zev Yaroslavsky, Third District
Supervisor Michael D. Antonovich, Fifth District

FROM: Kurt E. Floren 
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SUBJECT: **REPORT ON MISREPRESENTATION AT FARMERS' MARKETS
RESPONSE TO BOARD MOTION 010714-61A**

On January 7, 2014, on a motion by Fifth District Supervisor Michael Antonovich, your Board directed the Agricultural Commissioner to report back in 30 days with recommendations to enhance inspection and certification processes, at the state and local levels, to protect consumers from deceptive practices by some produce sellers at Certified Farmers' Markets (CFMs), including current funding, staffing, and revenue sources for both state and county programs. This is provided in response to your Board's directive.

BACKGROUND

The California Department of Food and Agriculture (CDFA) and County Agricultural Commissioners (CACs) are charged with enforcing laws and regulations designed to maintain integrity in Certified Farmers' Markets (CFMs). Funding for these activities has been inadequate for decades at both the State and county levels.

Los Angeles County has more than 150 CFMs conducting sales operations weekly, at which farmers who are "certified" as Certified Producers, under the Direct Marketing/Certified Farmers' Market program, sell produce which they have grown directly to the public. Certified Farmers' Markets (CFMs), which are registered and certified by the local County Agricultural Commissioner of the respective county in which each CFM is located, are intended to make quality produce available at reasonable prices and provide venues for growers to sell their products as an alternative to participation in the conventional wholesale produce marketplace.

In Los Angeles County, and among the approximately 150 CFMs that operate therein, more than 700 Certified Producers (CPs) from dozens of California counties sell from more than 2,000 booths weekly (The number of active CFMs fluctuates through the year, as does the number of participating Certified Producer vendors). State law requires that only agricultural products actually produced by a specific farmer within California may be sold by that farmer, as a Certified Producer, at a CFM. As evidenced by routine inspections of the County of Los Angeles Department of Agricultural Commissioner/Weights and Measures (ACWM) staff, the vast majority of Certified Producers bring to market fresh, California products that they have grown, but some vendors abuse the CFM system and deceive consumers by selling produce that they have purchased or sourced from others – some of it, even, from other states or countries.

PAST AND PRESENT INSPECTION PRACTICES

Under ACWM's certification and inspection program over many recent years, ACWM inspects the growing grounds of each Certified Producer growing agricultural products in Los Angeles County once each year to list and verify all commodities that the respective grower intends to sell at CFMs. Additional growing ground inspections may be conducted, should a grower wish to add new or seasonal crops to his/her list of commodities, documented on a Certified Producer Certificate issued by ACWM and required to be displayed at any CFM booth from which he/she sells. In regard to inspections of CFMs, while state law (Food and Agricultural Code Section 47020[a]) requires that each market be inspected once in each six months of operation (i.e., twice per year), ACWM has endeavored to inspect each CFM once each quarter-year of operation (i.e., four times each year). Over 94% of CFMs in the county operate year-round, each conducting 52 weekly sales events. However, current staffing and funding, discussed below, over the past several years has enabled inspection of all CFMs only, on average, three times each year. While still exceeding the biennial inspection mandate under the law, this results in 49 weeks of market operation, in a 52-week CFM operation, with no regulatory oversight in each case. Furthermore, investigatory and follow-up inspections to verify corrective actions and/or to obtain evidence of continuing non-compliance by suspect vendors, when identified in the course of the occasional routine inspections, have, through such additional inspection visit needs, served to diminish resources to conduct routine inspections even more.

CFM PROGRAM EXPENDITURES

ACWM, in performing regulatory inspections of CFMs and Certified Producers, expended the following approximate amounts to support inspection services:

- \$243,000 in FY 2011/12
- \$259,500 in FY 2012/13
- \$157,000 in the first half of FY 2013/14 (Projects to approximately \$300,000)

Recent increased expenditures reflect heightened costs for enforcement actions against vendors found selling products at CFMs they did not produce.

ACWM's current fee schedule, last approved by the County of Los Angeles Board of Supervisors in 1994, is employed in charging fees to CFM Operators and Certified Producers for certification services. Total revenues collected by ACWM in recent years under this fee schedule to support the Certified Farmers' Market Program are as follows:

\$77,991 in FY 2011/12	[~\$165K shortfall]
\$81,334 in FY 2012/13	[~\$178K shortfall]
\$83,925 in FY 2013/14 (Projected)	[~\$216K shortfall]

CFM PROGRAM REVENUES

County of Los Angeles ACWM Certified Farmers' Market Certification Fees:

A base fee of \$408 is charged to market operators for annual certification of CFMs containing 15 or fewer Certified Producers (CPs). Operators of CFMs with greater than 15 CPs are charged an additional fee of \$16 for each additional CP.

Example:

A large CFM with 80 CPs selling in the market is assessed the following:

Base Fee:	\$ 408	
Additional CP Fees:	\$1,040	(65 add'l CPs X \$16 each = \$1,040)
Total Fee:	\$1,448	Annual CFM Certification Fee

It is noteworthy that the fee structure above was developed in consideration of typical CFM operations and related average inspection time requirements at the time of adoption. Complexities in Direct Marketing/Certified Farmers' Market laws, regulations, and practices over past years resulted in the need for far more complex inspections and investigations. These include, but are not limited to:

- Significant expansion of CFM and Certified Producer populations
- Permitting of individual Certified Producers to sell on behalf of other CPs
- Additions to documentation posting requirements (e.g., Re: "organic" produce and registration/certification documents)
- Requirements for issuance of detailed memoranda re: sales to restaurants and other institutions intending to re-sell products (a single time)
- Refinements to recordkeeping requirements regarding sales volumes of each product by each vendor (subject to review by ACWM Inspectors)

As the time required to perform thorough, effective, and conclusive inspections of these and other CFM participation statutory and regulatory compliance matters has increased, ACWM resources supported by existing fee schedule terms have become even more taxed and are insufficient to provide the fully effective and comprehensive regulatory program necessary to ensure compliance.

County of Los Angeles ACWM Certified Producer Certification Fees:

Producers who grow agricultural products in Los Angeles County and seek certification as Certified Producers are charged a flat fee of \$63 for certification. Fees permitted to be imposed by Counties are capped by State statute (California Food and Agricultural Code Section 47020 [b]) at no more than \$60 per hour to recover costs for inspection and certification. As current costs for ACWM inspection services are \$82 per hour (weighted hourly rate), the state law limitations create an automatic deficit for Los Angeles County of nearly 27% in establishing fees to recover actual per-hour costs.

Again, the above fee rate of \$63 to obtain a Certified Producer Certificate was developed based upon average time expenditures to perform growing ground inspections at the time of adoption. With the growth in CFM popularity, the resulting opportunities for growers to participate in CFMs, and a relative increase in the need for product diversity to keep consumer interest in multiple CFMs, growers have expanded their production into a much wider array of products, including herbs, nursery stock (decorative plants), honey, and greater varieties of produce. Hence, the complexity of Certified Producer growing grounds has increased, resulting in greater inspection time expenditures, exceeding revenues.

It should be noted that the \$60-per-hour statutory cap on fees that County Boards of Supervisors are authorized to impose is not a problem unique to Los Angeles County. Nearly all other California Counties face actual inspector hourly costs exceeding \$60 and experience resulting shortfalls in revenues and staffing. As more than 75% of Certified Producers selling in Los Angeles County come from other counties, it is imperative that growing ground inspections, both routine and investigative, be funded and enabled through fee revenue in every county. As Los Angeles County ACWM inspectors have no jurisdiction to enter other counties to perform investigative inspections after observances of questionable produce or practices in local CFMs, we must rely upon inspector staff of other County agricultural departments to perform those follow-up inspections and to provide the evidence necessary to prove selling-not-of-own-production in our local CFMs and to pursue enforcement actions designed to remedy non-compliant business practices. Therefore, the existing statutory limitations present significant challenges to the County of Los Angeles CFM regulatory program, both directly and indirectly.

California Department of Food and Agriculture (CDFA) Fees:

In addition to local fees cited above, CFM Operators pay fees to CDFA in the amount of sixty cents (\$0.60) for each producer selling each day in their respective CFMs, referred to as “stall fees,” as required by FAC Section 47021. The only source of funding for the State’s Certified Farmers’ Market Program, these stall fee payments generate only an average \$240,000 from all CFMs statewide to support State oversight and coordination of County programs.

Due to the statewide nature of Certified Farmers’ Market activities, with growers from throughout California traversing county lines and selling products from all over the state, CDFA support is critical to effectively coordinate multi-County investigations, provide statewide distribution of violation notices to all affected County Agricultural Commissioner staffs, and to provide uniform training and direction to all appropriate County officials to effect a cohesive,

complimentary statewide regulatory program. The State fee of sixty cents (\$0.60), capped by statute (Food and Agricultural Code Section 47021), has remained unchanged for more than 15 years. Under the same statute, resulting revenues (presently about \$240K) must be utilized to support all of the following CDFA activities:

- Coordination of the Certified Farmers' Market Advisory Committee
- Evaluation of county enforcement actions
- Assistance to multi-county enforcement problems
- Adoption of regulations to carry out the CFM program
- Hearing appeals re: county agricultural commissioner enforcement actions
- Review of rules/procedures established by CFMs
- Issuance of advisory opinions and provision of hearings regarding whether rules or procedures are consistent with statutes and regulations
- Maintenance of current statewide listings of CFMs and respective locations and operation schedules
- Maintenance of current statewide listings of Certified Producers
- Dissemination to all CFMs information regarding suspension/revocation of Certified Producer Certificates and imposition of administrative penalties
- All other actions

In most recent past years, CDFA has been able, given the breadth of the above responsibilities and the very limited fee revenues, to provide only the most limited in-the-field support to multi-County investigative and regulatory activities. As a result, the fraudulent activities highlighted in recent media accounts and documented through ACWM enforcement activities, principally involving growers "supplementing" their own production through purchase of commodities from non-certified and, even, non-California sources for fraudulent resale through CFMs, runs the risk of going largely unabated due to inability to provide needed multi-jurisdictional resources to investigative and enforcement activities.

RECENT AND CURRENT LEGISLATIVE EFFORTS

In January of 2013, State Assemblyman Roger Dickinson (7th District) introduced Assembly Bill 996 (AB 996), sponsored by the California Farm Bureau Federation (CFBF), to address needs for increased enforcement and enhanced funding for CFM registration, certification, and regulatory programs. The County of Los Angeles Agricultural Commissioner and other members of the California Agricultural Commissioners and Sealers Association (CACASA) worked closely with Assemblyman Dickinson and the CFBF to develop provisions in AB 996 that would provide adequate resources for County regulators as well as State oversight and coordination, including development of a statewide database to record activities of Certified Producers

operating in multiple counties. AB 996 would have provided authorization to County Agricultural Commissioners to charge certification and inspection fees “reflecting or equal to the actual expenses incurred,” thus providing full cost recovery, and other fees to be assessed by CDFA would have generated approximately \$750,000 in revenues through increased stall fees and new registration fees. Stall fees, in AB 996, would be assessed not only in accordance to the numbers of producers of agricultural commodities selling through CFMs, but also those non-agricultural vendors who benefit from selling their products at craft, food, and street bazaar events commonly held in conjunction with CFMs. These fees would be collected by CDFA, with a portion to be distributed to County Agricultural Commissioners to support enhanced enforcement activities through cooperative agreements.

On May 24, 2013, the Senate Appropriations Committee held AB 996 under submission, estimating that the full cost to administer the State program would be more than \$1 million, but projecting revenues to be only \$750,000. The bill died, on January 31, 2014, pursuant to Article IV, Section 10(c) of the Constitution and, on February 3, 2014, was filed with the Chief Clerk under Joint Rule 56, preventing further consideration in the current legislative session.

However, continuing communications with key staff of the California Farm Bureau Federation indicate that work continues in proposing new 2014 legislation reflecting the provisions cooperatively developed and tentatively agreed to by CDFA, CFBF, and CACASA. The Los Angeles County Agricultural Commissioner is, and will continue to be, in close communication with all involved, remains prepared and enthusiastic to assist in development of further legislative enhancements for the benefit of state and local agricultural agencies, and will keep your Board informed of the status of such legislation. At the time that new legislation is presented, a report will be submitted recommending and seeking your Board’s position on the bill.

PROGRAM COST AND FEE EVALUATIONS:

ACWM has conducted a full review of program revenues and expenditures regarding multiple recent fiscal years, including all program activities undertaken in the first half of FY 2013-14. From this review, estimates of necessary field inspection times have been calculated to more accurately reflect actual time expenditures for comprehensive inspections of CFMs on a quarterly basis, twice the frequency set forth in existing state law, but necessary to provide an enhanced regulatory presence in the marketplace and to conduct appropriately thorough initial and follow-up inspections. Proposed CFM Certification Fee revisions have been developed, under the current statutory cap of \$60 per hour, resulting in proposed fees ranging from a base of \$560 (re: CFMs with 1-10 CPs) to \$4,500 for the most populous Certified Farmers’ Markets (40 or more CPs). While significant increases from existing fee rates, ACWM believes that costs to small CFMs of about \$11 per week of operation ranging to those for large CFMs of approximately \$87 per week are reasonable to provide adequate protections to consumers, competing Certified Producers, and competing CFMs, alike.

Regarding Certified Producer certification fees, ACWM has conducted equivalent analysis of recent time expenditures for the conduct of producer growing ground inspections as well as administrative and clerical costs for the production and issuance of Certified Producer

Certificates (CPCs), which must be displayed when selling products at CFMs. Again, developed within the current statutory cap of \$60 per hour, ACWM proposes to establish a revised fee schedule reflecting a base fee of \$90, which includes the first hour of growing ground inspection time, plus a fee of \$60 per hour for additional time necessary to inspect large tracts of land and/or extensive lists of crops for certification. While an anticipated average CPC fee of \$170 is a significant increase from the current fee of \$63, ACWM submits that an average cost of just over \$3 per week to year-round participants in the CFM marketplace is reasonable to provide protections necessary to ensure fair competition among Certified Producers.

ACTIONS AND RECOMMENDATIONS:

1. ACWM has finalized drafting of the above-described proposed schedule of fees and will submit the proposal to the Department of Auditor-Controller next week for review, providing cost recovery up to the maximum allowed under current statutory restrictions (FAC § 47020).
 2. If approved by the Auditor-Controller, ACWM will promptly submit a recommendation to your Board to adopt the revised schedule of fees through the public hearing process, resulting in annual fee revenue increases of approximately \$137,000.
 3. The County of Los Angeles Agricultural Commissioner will work with the California Agricultural Commissioners and Sealers Association, the California Farm Bureau Federation, the direct marketing industry, and the State Legislature to advance and enact legislation to improve statewide regulation of direct marketing and to enhance industry-supported funding of enforcement activities at Certified Farmers' Markets at both the State and local levels.
 4. Upon determination that anticipated proposed legislation is mutually beneficial in providing adequate regulatory resources at the State and local level, ACWM will present a recommendation to your Board seeking a position of support and clearance to provide assistance and testimony, as needed, to the State Legislature to pursue enactment.
 5. Upon enactment of such legislation, anticipated to include authorization to establish fees reflecting actual costs of inspection and certification services, ACWM will re-review program costs and fees and present your Board with additional fee schedule revisions to effect maximized cost recovery for an optimum regulatory program.
- c: William T Fujioka, Chief Executive Officer
Georgia Mattera, Deputy Chief Executive Officer, Safety
Sachi Hamai, Executive Officer; Board of Supervisors
Board Deputies